

1939-19

STATE OF SOUTH CAROLINA

(Caption of Case)

dPi Teleconnect, L.L.C.

v.

BellSouth Telecommunications, Inc.
dba AT&T South Carolina

Regarding BellSouth's failure to extend
Cash Back promotions to dPi

BEFORE THE
PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA

COVER SHEET

DOCKET
NUMBER: 2008 - 160 - C

(Please type or print)

Submitted by: Christopher Malish

Address: Foster Malish & Cowan, LLP
1403 West Sixth St.
Austin TX 78703

SC Bar Number: n/a

Telephone: 512-476-8591

Fax: 512-477-8657

Other: _____

Email: cmalish@fostermalish.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for use by the Public Service Commission of South Carolina for the purpose of docketing and must be filled out completely.

DOCKETING INFORMATION (Check all that apply)

☐ Emergency Relief demanded in petition

☐ Request for item to be placed on Commission's Agenda
expeditiously

☐ Other: _____

INDUSTRY (Check one)

- ☐ Electric
☐ Electric/Gas
☐ Electric/Telecommunications
☐ Electric/Water
☐ Electric/Water/Telecom.
☐ Electric/Water/Sewer
☐ Gas
☐ Railroad
☐ Sewer
☒ Telecommunications
☐ Transportation
☐ Water
☐ Water/Sewer
☐ Administrative Matter
☐ Other: _____

NATURE OF ACTION (Check all that apply)

- | | | |
|--|--|--|
| <input type="checkbox"/> Affidavit | <input type="checkbox"/> Letter | <input type="checkbox"/> Request |
| <input type="checkbox"/> Agreement | <input type="checkbox"/> Memorandum | <input type="checkbox"/> Request for Certification |
| <input type="checkbox"/> Answer | <input type="checkbox"/> Motion | <input type="checkbox"/> Request for Investigation |
| <input type="checkbox"/> Appellate Review | <input type="checkbox"/> Objection | <input type="checkbox"/> Resale Agreement |
| <input type="checkbox"/> Application | <input type="checkbox"/> Petition | <input type="checkbox"/> Resale Amendment |
| <input type="checkbox"/> Brief | <input type="checkbox"/> Petition for Reconsideration | <input type="checkbox"/> Reservation Letter |
| <input type="checkbox"/> Certificate | <input type="checkbox"/> Petition for Rulemaking | <input type="checkbox"/> Response |
| <input type="checkbox"/> Comments | <input type="checkbox"/> Petition for Rule to Show Cause | <input type="checkbox"/> Response to Discovery |
| <input type="checkbox"/> Complaint | <input type="checkbox"/> Petition to Intervene | <input type="checkbox"/> Return to Petition |
| <input type="checkbox"/> Consent Order | <input type="checkbox"/> Petition to Intervene Out of Time | <input type="checkbox"/> Stipulation |
| <input type="checkbox"/> Discovery | <input checked="" type="checkbox"/> Prefiled Testimony | <input type="checkbox"/> Subpoena |
| <input type="checkbox"/> Exhibit | <input type="checkbox"/> Promotion | <input type="checkbox"/> Tariff |
| <input type="checkbox"/> Expedited Consideration | <input type="checkbox"/> Proposed Order | <input type="checkbox"/> Other: _____ |
| <input type="checkbox"/> Interconnection Agreement | <input type="checkbox"/> Protest | |
| <input type="checkbox"/> Interconnection Amendment | <input type="checkbox"/> Publisher's Affidavit | |
| <input type="checkbox"/> Late-Filed Exhibit | <input type="checkbox"/> Report | |

Print Form

Reset Form

FOSTER MALISH & COWAN, L.L.P.

ATTORNEYS AND COUNSELORS AT LAW
A REGISTERED LIMITED LIABILITY PARTNERSHIP

1403 WEST SIXTH STREET
AUSTIN, TEXAS 78703
(512) 476-8591
FAX: (512) 477-8657
www.fostermalish.com

Jennifer L. Washington, CP
Paralegal

WRITER'S EMAIL:
jennifer@fostermalish.com

July 18, 2008

VIA UPS NEXT DAY AIR

The Honorable Charles L.A. Terreni
Chief Clerk

South Carolina Public Service Commission
101 Executive Center Drive, Suite 100
Columbia, South Carolina 29210

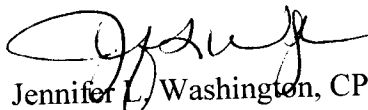
RE: dPi Teleconnect, L.L.C. v. BellSouth Telecommunications, Inc.
dba AT&T South Carolina, regarding BellSouth's failure to extend
Cash Back promotions to dPi
Docket No. 2008-160-C

Dear Mr. Terreni:

Please find enclosed the original and one copy of **dPi Teleconnect's Direct Testimony of Brian Bolinger** for filing.

If you have any questions or need additional information, please do not hesitate to contact me.

Very truly yours,


Jennifer L. Washington, CP
Paralegal

cc: Patrick W. Turner, Esquire (via electronic mail service)
C. Lessie Hammonds, Esquire (via electronic mail service)
John J. Pringle, Jr. (via electronic mail service)
Mr. Brian Bolinger (via electronic mail service)

Enclosures

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**BEFORE THE
PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA**

dPi TELECONNECT, LLC,
Complainant,

v.

**BELLSOUTH
TELECOMMUNICATIONS, INC.,**
Defendant

DOCKET No. 2008-160-C

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COMMISSION

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DIRECT TESTIMONY OF BRIAN BOLINGER

Please tell us who you are and give a little background about yourself.

My name is Brian Bolinger. I am dPi's vice president of legal and regulatory affairs. I am the one who has taken the lead in dealing with this dispute over promotion credits with BellSouth since its inception, along with Steve Watson of Lost Key Telecom Inc., which functions as dPi's billing and collections agent for promotions.

Please give a little background on dPi Teleconnect and describe the history of dPi Teleconnect's dispute with BellSouth.

dPi Teleconnect is a competitive facilities-based telecommunications company authorized to provide intrastate local exchange and interexchange telecommunications services in South Carolina. dPi provides telecommunications services to residential and business customers. This case involves only dPi Teleconnect's resale operations and relationship with BellSouth.

BellSouth is required by law and by contract to make available for resale any promotion that BellSouth makes available to its customers for an extended period of time.

Among other things, the parties' contract provides in relevant part the following:

- 1 a. That the parties wish to interconnect “pursuant to Sections 251 and 252 of the Act”
2 GTC p.1;
3
4 b. Parity: “When DPI purchases Telecommunications Services from BellSouth pursuant
5 to ... this Agreement for the purposes of resale to End Users, such services shall be
6 be ... subject to the same conditions... that BellSouth provides to its ...End Users.”
7 GTC p. 3
8
9 c. Governing Law: “... this agreement shall be governed by and construed in accordance
10 with federal and state substantive telecommunications law, including rules and
11 regulations of the FCC....” GTC p. 15.
12
13 d. Resale Attachment’s General Provision sections 3.1: p. 4: “...Subject to effective and
14 applicable FCC and Commission rules and orders, *BellSouth shall make available*
15 *to DPI for resale those telecommunications services BellSouth makes available...to*
16 *customers who are not telecommunications carriers.*”
17

18 Federal law provides, among other things, the following:

- 19
20 e. 47 U.S.C. § 251(c)(4)(A). ILECs have the duty to “offer for resale at wholesale rates
21 any telecommunications service that the carrier provides at retail to subscribers who
22 are not telecommunications carriers.”
23
24 f. 47 U.S.C. § 251(c)(4)(B). ILECS have a duty not to “prohibit, and not to impose
25 unreasonable or discriminatory conditions or limitations on, the resale of such
26 telecommunications service.”
27
28 g. 47 C.F.R. § 51.613(a)(2). “The following types of restrictions on resale may be
29 imposed: Short term promotions. An incumbent LEC shall apply the wholesale
30 discount to the ordinary rate for a retail service rather than a special promotional rate
31 only if:
32 (i) Such promotions involve rates that will be in effect for no more than 90
33 days; and
34 (ii) The incumbent LEC does not use such promotional offerings to evade the
35 wholesale rate obligation, for example by making available a sequential series
36 of 90-day promotional rates.”
37

38
39 This case arises because of BellSouth’s refusal to extend its promotional pricing to dPi. The
40 parties’ dispute arises under their interconnection agreement and centers on credits which are due
41 from BellSouth to dPi Teleconnect as a result of dPi Teleconnect’s reselling of services subject to

1 BellSouth promotional discounts. BellSouth has over the past months and years sold its retail
2 services at a discount to its end users under various promotions that have lasted for more than 90
3 days. dPi Teleconnect is entitled to purchase and resell those same services at the promotional rate,
4 less the wholesale discount. As a practical matter, dPi Teleconnect has bought these services at the
5 regular retail rate less the resale discount, then been credited the difference between that rate and the
6 promotional rate pursuant to “promotion credit requests.”

7 **What promotions are involved in this case?**

8 Of concern in this particular case, BellSouth has provided a number of “cash back”
9 promotions to its retail customers going back to late 2003.¹

10
11 **What is the effect of these promotions?**

12
13 BellSouth’s retail customers qualifying for these promotions get cash (or cash equivalent)
14 back from BellSouth in the stated amount. Essentially, these are rebates. Obviously, the practical
15 effect of these promotions is to reduce the effective retail rate qualifying customers pay for telephone
16 service. The size of the promotions is so large that the end result is that the net amount BellSouth’s
17 retail customers qualifying for the promotions pay for service is far less than the wholesale amount.

18
19 **What happened when dPi applied for these promotion credits?**

20
21 Although dPi met the same qualifications as BellSouth’s retail end users, and applied for
22 these promotional credits, it has to this point not been notified one way or the other that BellSouth

1

The three promotions involved through July 2007 are designated by BellSouth as Cash Back \$100 Two Features; Cash Back \$100 Discount Complete Choice \$100; and Cash Back \$50 2 Pack Plan (PAMA6)- CBP6

1 would pay the credits requested for the periods ending June 8, 2007. BellSouth has, however, paid
2 the credits requested for service rendered after June 2007. The timing appears to coincide with the
3 4th Circuit's decision in *BellSouth Telecommunications Inc. v. Sanford et al.*, 494 F3d 439 (C.A.
4 4 – N.C., 2007), in which the 4th Circuit upheld the North Carolina Commission's decision that
5 promotions that tend to reduce the retail price paid by retail customers must be made available to
6 CLECs.

7 Although BellSouth has failed to either deny or accept dPi's promotional credit requests
8 despite multiple inquiries by dPi, at this point it seems unlikely that BellSouth will make the
9 promotion payments unless compelled to do so by the judiciary or the state commissions, making
10 the filing of this case necessary. I escalated and attempted to resolve this issue with BellSouth's
11 Pam Tipton, but according to her, the BellSouth/AT&T legal department has instructed her that they
12 do not owe any cash back promotions prior to the date of the appellate court's ruling. Obviously that
13 is not accurate and I cannot imagine any attorney actually providing that advice. I tried to explain
14 the senselessness of that line of thinking and the response I received was "that is just what I am being
15 told."

16 **How much money in promotions is at stake?**

17 Here in South Carolina, dPi qualified and applied for, but was not paid, approximately
18 \$85,350 in cash back promotions. A spreadsheet itemizing the amounts in question is attached as
19 dPi's Exhibit 1. Through October 2007, dPi qualified and applied for, but has not yet been paid:

20 \$36,100 related to the "Cash Back \$100 Complete Choice" promotion offer;

21
22 \$7,400 related to the "Cash Back \$100 1FR with Two Paying Features" promotion offer; and

23
24 \$41,850 related to the "Cash Back \$50 1FR with Two Paying Features" promotion offer.

1 Across the 9 state BellSouth region, the total figure that dPi qualified and applied for, but was not
2 paid, in cash back promotion credits was approximately \$499,600.

3
4 **Has BellSouth paid any requests for cash back promotions?**

5
6 Yes. BellSouth has admitted dPi is entitled to these kinds of promotional credits on these
7 telecommunications services dPi has purchased from BellSouth by paying these credits from July
8 2007 forward. However, BellSouth has neither formally accepted nor denied dPi's claims for
9 identical credits for earlier periods; this, for all practical purposes, must now be treated as a denial
10 or refusal to pay these credits to which dPi is entitled. dPi accordingly requests that this Commission
11 enter an order directing BellSouth to pay the credits together with interest at the contract rate.

ILEC	Company	Bill Date	Amount Submitted	Description	Q Account	CB Offer
BelSouth	DPI Teleconnect	11/08/2003	\$ 1,500.00	C2-SC-803-20031108	803Q888437	\$100
BelSouth	DPI Teleconnect	12/08/2003	\$ 1,700.00	C2-SC-803-20031208	803Q888437	\$100
BelSouth	DPI Teleconnect	01/08/2004	\$ 1,400.00	C2-SC-803-20040108	803Q888437	\$100
BelSouth	DPI Teleconnect	01/08/2005	\$ 300.00	C2-SC-803-20050108	803Q888437	\$100
BelSouth	DPI Teleconnect	02/08/2005	\$ 900.00	C2-SC-803-20050208	803Q888437	\$100
BelSouth	DPI Teleconnect	03/08/2005	\$ 1,100.00	C2-SC-803-20050308	803Q888437	\$100
BelSouth	DPI Teleconnect	04/08/2005	\$ 500.00	C2-SC-803-20050408	803Q888437	\$100
Total C2						\$ 7,400.00

BelSouth	DPI Teleconnect	04/08/2005	\$ 350.00	C3-SC-803-20050408	803Q888437	\$50
BelSouth	DPI Teleconnect	01/08/2006	\$ 150.00	C3-SC-803-20060108	803Q888437	\$50
BelSouth	DPI Teleconnect	02/08/2006	\$ 350.00	C3-SC-803-20060208	803Q888437	\$50
BelSouth	DPI Teleconnect	03/08/2006	\$ 450.00	C3-SC-803-20060308	803Q888437	\$50
BelSouth	DPI Teleconnect	04/08/2006	\$ 300.00	C3-SC-803-20060408	803Q888437	\$50
BelSouth	DPI Teleconnect	05/08/2006	\$ 100.00	C3-SC-803-20060508	803Q888437	\$50
BelSouth	DPI Teleconnect	07/08/2006	\$ 200.00	C3-SC-803-20060708	803Q888437	\$50
BelSouth	DPI Teleconnect	08/08/2006	\$ 1,250.00	C3-SC-803-20060808	803Q888437	\$50
BelSouth	DPI Teleconnect	09/08/2006	\$ 3,350.00	C3-SC-803-20060908	803Q888437	\$50
BelSouth	DPI Teleconnect	10/08/2006	\$ 8,850.00	C3-SC-803-20061008	803Q888437	\$50
BelSouth	DPI Teleconnect	11/08/2006	\$ 12,100.00	C3-SC-803-20061108	803Q888437	\$50
BelSouth	DPI Teleconnect	12/08/2006	\$ 14,400.00	C3-SC-803-20061208	803Q888437	\$50
Total C3						\$41,850.00

BelSouth	DPI Teleconnect	08/08/2004	\$ 100.00	CB-SC-803-20040808	803Q888437	\$100
BelSouth	DPI Teleconnect	12/08/2004	\$ 100.00	CB-SC-803-20041208	803Q888437	\$100
BelSouth	DPI Teleconnect	02/08/2005	\$ 200.00	CB-SC-803-20050208	803Q888437	\$100
BelSouth	DPI Teleconnect	03/08/2005	\$ 100.00	CB-SC-803-20050308	803Q888437	\$100
BelSouth	DPI Teleconnect	04/08/2005	\$ 400.00	CB-SC-803-20050408	803Q888437	\$100
BelSouth	DPI Teleconnect	05/08/2005	\$ 100.00	CB-SC-803-20050508	803Q888437	\$100
BelSouth	DPI Teleconnect	06/08/2005	\$ 100.00	CB-SC-803-20050608	803Q888437	\$100
BelSouth	DPI Teleconnect	07/08/2005	\$ 100.00	CB-SC-803-20050708	803Q888437	\$100
BelSouth	DPI Teleconnect	08/08/2005	\$ 100.00	CB-SC-803-20050808	803Q888437	\$100
BelSouth	DPI Teleconnect	09/08/2005	\$ 100.00	CB-SC-803-20050908	803Q888437	\$100
BelSouth	DPI Teleconnect	10/08/2005	\$ 10,050.00	CB-SC-803-20070408	803Q888437	\$100
BelSouth	DPI Teleconnect	04/08/2007	\$ 7,950.00	CB-SC-803-20070508	803Q888437	\$100
BelSouth	DPI Teleconnect	05/08/2007	\$ 7,100.00	CB-SC-803-20070608	803Q888437	\$100
BelSouth	DPI Teleconnect	06/08/2007	\$ 9,600.00	CB-SC-803-20070708	803Q888437	\$100
Total CB						\$36,100.00
Total SC Cashbacks						\$85,350.00

CB = \$100 Cash Back Offer
C2 = \$100 1FR + 2 Cash Back Offer
C3 = \$50 1FR + 2 Cash Back Offer
CB-P6 = \$50 to \$25 BelSouth Competitive Acquisition 2 Pack Bundle

**BEFORE THE
PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA
DOCKET NO. 2008-160-C**

In the matter of:

dPi Teleconnect, L.L.C. v.
BellSouth Telecommunications, Inc.
dba AT&T South Carolina

CERTIFICATE OF SERVICE

I hereby certify that I have this the 18th day of July, 2008, served a true and correct copy of the foregoing to the following via electronic mail:

J. Phillip Carver, Sr. Attorney
AT&T Southeast
675 West Peachtree Street, Suite 4300
Atlanta, Georgia 30375

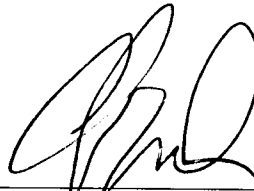
***Via Electronic Mail:
pc0755@att.com***

Patrick W. Turner, Gen. Counsel - SC
BellSouth Telecommunications, Inc.
dba AT&T South Carolina
1600 Williams Street, Suite 5200
Columbia, South Carolina 29201

***Via Electronic Mail:
pt1285@att.com***

C. Lessie Hammonds, Esquire
Office of Regulatory Staff
Legal Department
PO Box 11263
Columbia, South Carolina 29211

***Via Electronic Mail:
lhammons@regstaff.sc.gov***



Chris Malish

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